

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MICHAEL LEE ROSE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-370-JJF
)	
D.O.C. COMMISSIONER STAN TAYLOR,)	
First Correctional Medical, Correctional Medical)	
Services, Dr. Niaz)	TRIAL BY JURY
)	DEMANDED
Defendants.)	
)	

**MOTION OF DEFENDANTS, CORRECTIONAL MEDICAL SERVICES AND
MUHAMMED A. NIAZ FOR PROTECTIVE ORDER**

1. On September 28, 2007, this Court issued its Memorandum Opinion (D.I. 34), granting Motion of Defendants, Correctional Medical Services and Dr. Muhammed A. Niaz, to Dismiss Plaintiff's Complaint, in part. D.I. 35. Defendants, Correctional Medical Services and Dr. Muhammed A. Niaz, asserted, *inter alia*, that plaintiff failed to state a claim against Defendants. This Honorable Court agreed, stating that that plaintiff failed to state a claim against Defendants "since the Complaint failed to provide sufficient information for Defendants to adequately respond to the allegations." D.I. 34 at 5. Plaintiff, however, was given leave to amend his Complaint to correct the "pleading deficiencies." *Id.*

2. On or about October 1, 2007, counsel for Correctional Medical Services and Dr. Muhammed A. Niaz received plaintiff's "Motion for Admission" directed to Dr. Niaz, D.I. 37, and Correctional Medical Services, D.I. 36.

3. According to Fed. R. Civ. P. 26 (c), the Court "may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue

burden or expense....". Protective orders are entered by the Court for "good cause" which is a determination that consists of balancing the harm to the person seeking the protective order versus the importance of disclosure to the public. *Wiggins v. Burge*, 173 F.R.D. 226, 229 (N.D. Ill. 1997).

4. Until and unless plaintiff cures his pleading deficiencies as ordered by this Court, this action can not proceed. As such, Defendants should not be required to respond to discovery until the pleading deficiencies are cured.

WHEREFORE, Defendants, Correctional Medical Services and Dr. Muhammed A. Niaz, respectfully request that this Honorable Court grant the Defendants' Motion and enter a Protective Order, in the same or substantially the same form as attached hereto.

Local Rule 7.1.1 Certificate of Counsel

The undersigned hereby certifies, pursuant to Rule 7.1.1 of the Local Rules for the District Court of Delaware, that he is, as a practical matter, unable to discuss the subject of this Motion with the Plaintiff because the Plaintiff is an incarcerated individual at the Delaware Correctional Center. Defense counsel assumes the Plaintiff opposes the Motion.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
BY: /s/ Kevin J. Connors
KEVIN J. CONNORS, ESQUIRE (DE I.D. #2135)
1220 North Market Street
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(302) 552-4302
Attorneys for Correctional Medical Services and
Dr. Muhammed A. Niaz

DATED: October 24, 2007
15/538842.v1

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)	DEMANDED
Defendants.)	
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NOTICE OF MOTION

PLEASE TAKE NOTICE that Defendants', Correctional Medical Services, Inc. and Muhammed A. Niaz, Motion for Protective Order will be presented to The Honorable Joseph J. Farnan, Jr. at the convenience of the Court.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
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Services, Dr. Niaz

Defendants.

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Civil Action No. 06-370-JJF

TRIAL BY JURY
DEMANDED

ORDER

AND NOW, this _____ day of _____, 2007, upon consideration of the Motion of Defendants, Correctional Medical Services and Dr. Muhammed Niaz, For a Protective Order, and any Response thereto, it is hereby ORDERED that the Motion is GRANTED in favor of Defendants, Correctional Medical Services and Dr. Muhammed Niaz, and Correctional Medical Services and Dr. Muhammed Niaz shall not be required to respond to plaintiff's discovery until thirty days after an Amended Complaint is filed with the Court and plaintiff's pleading deficiencies are cured.

J.

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)	DEMANDED
Defendants.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2007, I electronically filed the Motion for Protective Order with the Clerk of Court using CM/ECF, which will send notification of such filing to the following:

Daniel L. McKenty, Esquire
Heckler & Frabizzio, P.A.
800 Delaware Avenue, Suite 200
P.O. Box 128
Wilmington, DE 19899

I hereby certify that on October 24, 2007, I have mailed by United States Postal Service, the Motion for Protective Order to the following non-registered participant:

Michael Lee Rose
SBI# 097880
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
BY: /s/ Kevin J. Connors
KEVIN J. CONNORS, ESQUIRE (DE I.D. #2135)
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(302) 552-4302
Attorneys for Correctional Medical Services and
Dr. Muhammed A. Niaz

DATED: October 24, 2007
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